

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
ABRAHAM RIOS,	:	
a/k/a "Junior"	:	
a/k/a "June"	:	NO. 96-0540-06

MEMORANDUM AND ORDER

HUTTON, J.

June 20, 1997

Presently before the Court is Abraham Rios' Motion to Exclude Alleged Co-Conspirators' Statements, and the Government's Response thereto.

I. BACKGROUND

The indictment in this case charges defendant Rios with participating in a conspiracy to distribute cocaine and to possess cocaine with intent to distribute. The defendant moves to exclude any statements purportedly made by coconspirators on grounds that no evidence of a conspiracy exists. The government states that sufficient evidence of a conspiracy exists to admit the statements of his coconspirators.

II. DISCUSSION

For a coconspirator's statement to be admissible, it must be made "by a coconspirator of a party during the course and in furtherance of the conspiracy." Fed. R. Evid. 801(d)(2); accord Bourjaily v. United States, 483 U.S. 171, 175 (1987).

Rule 104(a) of the Federal Rules of Evidence provides: "Preliminary questions concerning the . . . admissibility of evidence shall be determined by the court" Fed. R. Evid. 104(a) "[T]he evidentiary standard is unrelated to the burden of proof on the substantive issues, be it a criminal case or a civil case." Bourjaily, 483 U.S. at 175. "[W]hen the preliminary facts relevant to Rule 801(d)(2)(E) are disputed, the offering party must prove them by a preponderance of the evidence." Id. at 176. "In making its determination, [the Court] is not bound by the rules of evidence except those with respect to privileges." Fed. R. Evid. 104(a). Thus, out-of-court statements made by anyone, including the putative co-conspirators, may be considered by the Court for purposes of its preliminary finding. Id. at 178-80. "[T]rial courts must be permitted to evaluate these statements for their evidentiary worth as revealed by the particular circumstances of the case." Id. at 180. "Courts often act as factfinders, and there is no reason to believe that courts are any less able to properly recognize the probative value of evidence in this particular area."¹ Id.

In the instant case, in its effort to show the existence of a conspiracy, the government will rely upon the following: (a) tape recorded statements of defendant Rios, (b) tape recorded

1. The Bourjaily Court noted that "[t]he party opposing admission has an adequate incentive to point out the shortcomings in such evidence before the trial court finds the preliminary facts. If the opposing party is unsuccessful in keeping the evidence from the factfinder, he still has the opportunity to attack the probative value of the evidence as it relates to the substantive issue in the case." 483 U.S. at 180.

statements of other members of the conspiracy, including Juan Arana and Terrence Gibbs, (c) testimony of defendant Rios' putative co-conspirators who are now cooperating witnesses, and (d) physical evidence, to establish that defendant Rios was a member of the cocaine conspiracy charged in Count One of the Indictment.

On the issue of the existence of a conspiracy, evidence shall be presented to this Court. The Court will then make a preliminary finding of fact using the preponderance of evidence standard. If the Court finds that a conspiracy existed, then statements of the defendant's co-conspirators will be admissible at trial pursuant to Rule 801(d)(2)(E) of the Federal Rules of Evidence.

An appropriate Order follows.

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O R D E R

AND NOW, this 20th day of June, 1997, upon consideration of Defendant Abraham Rios' Motion to Exclude Alleged Co-Conspirators Statements (Docket No. 84), and the Government's Response thereto, IT IS HEREBY ORDERED that the Defendant's Motion is **DENIED**.

BY THE COURT:

HERBERT J. HUTTON, J.